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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,099	03/31/2004	David A. Hughes	50T5474.01	5171

27774 7590 10/11/2007  
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EXAMINER
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KIRK, LAMEKA J

ART UNIT	PAPER NUMBER
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2617

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10/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/814,099

Applicant(s)

HUGHES, DAVID A.

Examiner

Lameka J. Kirk

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Drawings*

1. The drawings were received on July 25, 2007. These drawings are acceptable.

### *Claim Objections*

2. Claim 12 is objected to because of the following informalities: In claim 12, it reads, "The handset of claim11", it should read – claim 11--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-18** are rejected under 35 U.S.C. 102(e) as being anticipated by Zhao et al. (US 2004/0204135 A1).

Regarding **claim 1**, Zhao discloses a method of creating a ring tone file (paragraph 18, lines 7-14), comprising the acts of:

receiving on a handset an electronic data file comprising a master audio recording (paragraph 41; paragraph 25, lines 1-7);

receiving on the handset a ring tone start designation for a first time during an output of the master audio recording (paragraph 44, lines 1-8; paragraph 25, lines 1-7);

receiving on the handset a ring tone stop designation for a second time during the output of the master audio recording (paragraph 44, lines 1-8; paragraph 25, lines 1-7 );

creating a ring tone file from a portion of the electronic data file defined by the start designation and the stop designation (paragraph 44, lines 12-17), the ring tone file solely comprising a temporally contiguous portion of the master audio recording (paragraph 33, lines 6-9; paragraph 34); and

making the ring tone file available for selection by a user (paragraph 45, lines 1-2).

Regarding **claim 2**, Zhao discloses everything claimed as applied above (see claim 1). In addition, Zhao discloses that the ring tone stop designation comprises an elapsed time after the ring tone start designation (paragraph 44, lines 6-8).

Regarding **claim 3**, Zhao discloses everything claimed as applied above (see claim 1). In addition, Zhao discloses that the step of receiving on the handset the electronic data file comprises receiving the electronic data file via a wireless signal (paragraph 21, lines 3-8 and 14-18).

Regarding **claim 4 and 5**, Zhao discloses everything claimed as applied above (see claim 1). In addition, Zhao discloses that associating the ring tone file with an input communication source where the input communication source is one of a paging system and a telephone system (paragraph 21, lines 28-30).

Regarding **claim 6**, Zhao discloses everything claimed as applied above (see claim 1). In addition, Zhao discloses a computer-readable storage medium (Figure 1,

45 (memory)) encoded with a computer program which, when loaded into a processor, implements the method of claim 1.

Regarding **claim 7**, Zhao discloses a handset comprising:

a processor (paragraph 20, line 3);

a memory coupled to the processor (paragraph 20, line 3; paragraph 24, lines 2-3);

a user interface coupled to the processor (paragraph 20, line 4; paragraph 34 lines 1-2); and a user-defined ring tone file stored in the memory, wherein the stored ring tone file is defined by the user entering a ring tone start designation for a master audio recording data file (paragraph 25, lines 1-7) and by the user entering a ring tone stop designation for the master audio recording data file (claim 1; paragraph 44, lines 6-8; paragraph 25, lines 1-7) and the ring tone file solely comprising a temporally contiguous portion of the master audio recording data file (paragraph 33, lines 6-9; paragraph 34).

Regarding **claim 8**, Zhao discloses everything claimed as applied above (see claim 7). In addition, Zhao discloses that the ring tone stop designation comprises an elapsed time after the ring tone start designation (paragraph 44, lines 6-8).

Regarding **claims 9 and 10**, Zhao discloses everything claimed as applied above (see claim 7). In addition, Zhao discloses a wireless handset comprising one of a cellular phone, a personal digital assistant, and a pager (paragraph 21, lines 28-30).

Regarding **claims 11-13**, Zhao discloses everything claimed as applied above (see claim 7). In addition, Zhao discloses that the user-defined ring tone file is

associated with an input communication source where the input communication source is one of a paging system and a telephone system (paragraph 21, lines 28-30).

Regarding **claim 14**, Zhao discloses a method of manufacturing a wireless handset, comprising the acts of:

- configuring the handset to receive an electronic data file comprising a master audio recording (paragraph 38, lines 1-4; paragraph 25, lines 1-7);

- configuring the handset to receive a first user input, wherein the first user input enables the user to input a ring tone start designation for a first time during an output of the master audio recording (paragraph 38, lines 11-14; paragraph 25, lines 1-7);

- configuring the handset to receive a second user input, wherein the second user input enables the user to input a ring tone stop designation for a second time during the output of the master audio recording (paragraph 30, lines 3-6; paragraph 25, lines 1-7);

- configuring the handset to create a ring tone file from a portion of the electronic data file defined by the start designation and the stop designation (paragraph, lines 3-6), the ring tone file solely comprising a temporally contiguous portion of the master audio recording (paragraph 33, lines 6-9; paragraph 34); and

- configuring the handset to make the ring tone file available for selection by the user (paragraph 30, lines 6-8).

Regarding **claim 15**, Zhao discloses everything claimed as applied above (see claim 14). In addition, Zhao discloses that the ring tone stop designation comprises an elapsed time after the ring tone start designation (paragraph 44, lines 6-8).

Regarding **claim 16**, Zhao discloses everything claimed as applied above (see claim 14). In addition, Zhao discloses the step of configuring the handset to receive the electronic data file comprises configuring the handset to receive the electronic data file via a wireless signal (paragraph 21, lines 3-8, 14-18).

Regarding **claims 17 and 18**, Zhao discloses everything claimed as applied above (see claim 14). In addition, Zhao discloses configuring handset to associate the ring tone with an input communication source where the input communication source is one of a paging system and a telephone system (paragraph 21, lines 28-30).

### ***Response to Arguments***

3. Applicant's arguments filed July 25, 2007 have been fully considered but they are not persuasive.

In the present application and regarding **claims 1, 7 and 14**, the Applicant argues on page 7 of the remarks, that the reference doesn't teach defining a ring tone file comprising temporally contiguous portion of a master audio recording file .

The Examiner respectfully disagrees with Applicant's arguments because the language "solely comprising" is board enough to no preclude Zhao et al. The Examiner believes that "consisting only" is more clear than the current "solely comprising" language. However, Zhao et al. would still read in this suggestion because Zhao et al. discloses the content used or stored can be singly used or combined audio, etc. (page 2, paragraph 0025). Zhao et al. also discloses portions of the audio can be sent (paragraph 0034).

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lameka J. Kirk whose telephone number is 571-270-1662. The examiner can normally be reached on Monday-Friday 7:30am-5pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rafael Perez-Gutierrez can be reached on 571-272-7915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LK 10/02/2007

  
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10/9/07